

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GREGORY D. PELFREY,	:	
Petitioner,	:	
v.	:	Case No. 3:19-cv-059
TIM BUCHANAN, Warden, Noble	:	JUDGE WALTER H. RICE
Correctional Institution,	:	
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #49);
OVERRULING PETITIONER'S MOTION FOR CERTIFICATE OF
APPEALABILITY (DOC. #48); JUDGMENT TO ENTER IN FAVOR OF
RESPONDENT AND AGAINST PETITIONER; CASE TO REMAIN
TERMINATED

Petitioner Gregory Pelfrey filed a Motion for Certificate of Appealability, Doc. #48, in connection with this Court's September 23, 2019, Decision and Entry dismissing the Petition for Writ of Habeas Corpus with Prejudice, Doc. #23. Petitioner has appealed that Order to the Sixth Circuit Court of Appeals. *See* Doc. #29.

On February 18, 2020, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations, Doc. #49, recommending that the Court overrule Petitioner's motion. Although Petitioner was advised of his right to file Objections to that Report and Recommendations, and of the consequences of failing to do so, no Objections were filed within the time allotted.

Based on the reasoning and citations of authority set forth by United States Magistrate Judge in his Report and Recommendations, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing, Doc. #49, and OVERRULES Petitioner's Motion for Certificate of Appealability, Doc. #48. As Magistrate Judge Merz noted, to the extent that Petitioner's Motion for Certificate of Appealability is construed as a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e), it is untimely. In addition, given the pending appeal, this Court lacks authority to grant a motion for relief from judgment under Fed. R. Civ. P. 60.

Judgment shall be entered in favor of Respondent and against Petitioner.

The captioned case shall remain terminated on this Court's docket.

Date: March 16, 2020



WALTER H. RICE
UNITED STATES DISTRICT JUDGE